HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.25235 OF 2006

Between:

S.M.Ibrahim Khan
. . .Petitioner

AND

The Municipal Corporation of
Hyderabad and others
. . .Respondents

:: ORDER ::

Counsel for the Petitioner : Shri B.Sudhakar Reddy

6th December, 2006

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PER G.S.SINGHVI, CJ

In this petition, the petitioner has made the following substantive prayers:

> "For the reasons stated in the affidavit accompanying, this Hon'ble Court may be pleased to issue a Writ, Order, or Direction, more particularly one in nature of Writ of Mandamus direct the respondents to consider and dispose of the representation dt.30.10.2006 for pertaining to illegal construction of compound wall in premises No.6-3-901/2, 6-3-901/2/A in Plot No.10, in survey No.19, Somajiguda, Hyderabad and consequently to declare the inaction of the respondents in considering the representation of the petitioner dt.30.10.2006 and within 15 days as stipulated by A.P. High Court in its various orders and judgements is bad in law and violative of orders/judgements of A.P. High Court in this regard.
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> For the reasons stated in the affidavit filed in support of the writ petition it is prayed that this Hon'ble Court may be pleased to direct the respondents to consider and dispose of the representation dt.30.10.2006 for pertaining to illegal construction of compound wall in premises No.6-3-901/2, 6-3-901/2/A, in Plot No.10 in Sy.No.19, Somajiguda, Hyderabad within two weeks from today, pending disposal of the writ petition."

The petitioner claims to be the agreement holder and General Power of Attorney holder of Smt. Kosaraju Kamalamma, who is said to be the owner of Plot No.10 comprised in Survey No.19, Somajiguda, Hyderabad (hereinafter described as 'the property in dispute'). He has filed this petition with the grievance that even though Smt. P.Tulsidevi,

P. Madhava Chowdary, Smt. Sajida Begum and M.A. Jabbar have nothing to do with the plot in question, they not only applied for grant of building permission in respect of the property in question, but illegally raised compound wall without even waiting for grant of permission by the competent authority and now they are taking steps to raise multi-storeyed building. He has alleged that despite marking representation to the concerned authority of the Municipal Corporation of Hyderabad to take steps for stopping illegal construction, the latter has not taken steps to stop the illegal construction.

We have heard Shri B.Sudhakar Reddy and perused the record. A perusal of the record shows that the petitioner filed O.S.No.1125 of 1997 against Smt. Kosaraju Kamalamma in the Court of IX Senior Civil Judge, City Civil Courts, Hyderabad (The affidavit filed by the petitioner is silent about the subject matter and fate of that suit.) Smt. Kosaraju Kamalamma is also said to have filed A.S.Nos.30 and 31 of 2005, which were allowed by Chief Judge, City Civil Court, Hyderabad vide his judgment dated
10-8-2006 (The affidavit of the petitioner is conspicuously silent about the issues raised in the two appeals. Not only this, the deponent has not disclosed against which judgment or order the two appeals were filed).

In the context of the averments contained in paragraphs 2 and 3 of the affidavit of the petitioner, we asked Shri Sudhakar Reddy to elucidate as to what is the nature of the suit filed by his client. In reply, learned counsel gave out that the suit is for specific performance. If that be so, we are of the considered view that instead of seeking intervention of the Court only for the purpose of issue of mandamus to the authorities of Municipal Corporation to entertain and decide representation dated 30.10.2006 made by him, the petitioner should

have sought amendment in the pending suit and also filed an appropriate application for grant of mandatory injunction. He could have also applied for temporary injunction.

Since the petitioner has not adopted that course, we, notwithstanding the ingenious articulation of the prayer clause, are not inclined to entertain the same because any direction by the Court is likely to result in initiation of action by the authorities of the Municipal Corporation for demolition of the construction made by Ms. P.Tulsidevi, Shri P.Madhava Chowdary, Smt. Sajida Begum and Shri M.A.Jabbar, none of whom has been impleaded as party to the writ petition.

With the above observations, the writ petition is dismissed leaving the petitioner free to amend the pending suit or file fresh suit and make appropriate prayer.

As a sequel to dismissal of the main petition, W.P.M.P.No.32308 of 2006 filed by the petitioner for interim relief is also dismissed.

G.S.SINGHVI, CJ

C.V.NAGARJUNA REDDY, J

Date: 06.12.2006

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